wealth, supra. However, in Massachusetts such prohibition is not regarded as enunciating the public policy of the state, and therefore it is considered better to apply the general rule upholding marriages valid where celebrated. *Medway* v. *Needham, supra.* And where a state prohibits persons related in a certain degree from marrying, considering such marriages incestuous and punishing the parties for living together the penal provision is considered as evidencing an intention on the part of the state of absolutely prohibiting those marriages which are, therefore, void though celebrated in a state which recognizes them as legal. *Johnson* v. *Johnson,* 57 Wash. 89, 106 Pac. 500; *United States* v. *Rogers,* 109 Fed. 886. But where there is no penal provision in the statute, and the marriage is not expressly declared void, if it is not incestuous in the strict sense it will be upheld if valid where the ceremony was performed. *Stevenson* v. *Gray,* 17 B. Mon. (Ky.) 193; *Sutton* v. *Warren, supra.* Some states have disregarded the general rule so far as to declare a marriage void when one of the parties, a citizen of that state, has been divorced and prohibited from marrying again, though no such prohibition existed in the state where the marriage was celebrated. *Pennegar* v. *State,* 87 Tenn. 244, 10 S. W. 305, 2 L. R. A. 703; *Re Stull,* 183 Pa. 625, 39 L. R. A. 539. The majority of the courts and text writers hold that these prohibitions are penal in their nature and must be strictly construed; therefore, marriages of such persons valid where they take place are also valid in the state of domicile, unless the statute has expressly shown an intent to exercise extraterritorial jurisdiction. *Van Voorhis* v. *Brintnall,* 86 N. Y. 18, 40 Am. Rep. 505; *State* v. *Shattuck,* 69 Vt. 403, 60 Am. St. Rep. 936; *Moore* v. *Hegeman,* 92 N. Y. 521, 44 Am. Rep. 408; MINOR, CONFL. L., § 74.

Though there seems to be much conflict on the question involved in the principal case, yet the underlying foundation of the decisions on both sides is whether the prohibitive statute expresses the distinct policy of that state. If the statute does express the public opinion of the state, marriages in violation of it are invalid; while if such is not the case, the general rule upholding marriages is applied and they are held to be valid. Though, as shown above, the weight of authority is perhaps contrary to the decision in the principal case, this may be explained by the construction of the statute as merely making marriages in violation of it voidable.

CONTRIBUTORY NEGLIGENCE—USE OF STREETS—DUTY OF PEDESTRIANS.—The plaintiff was crossing a village street when he was struck by the defendant's automobile only a short distance north of where the road turned. Before crossing, the plaintiff looked to the south and saw nothing, but failed to look again. *Held,* the plaintiff was not guilty of contributory negligence in not keeping a constant lookout; for the rule that one must stop, look and listen does not apply to persons using a public highway. *Aiken* v. *Metcalf* (Vt.), 97 Atl. 669.

The pedestrian and the driver of an automobile have reciprocal rights and duties in the use of public highways, both being required to exercise ordinary care. *Baker* v. *Close,* 204 N. Y. 92, 97 N. E. 501, 38 L. R. A.

(N. S.) 487; *Hennessey* v. *Taylor*, 189 Mass. 583, 76 N. E. 224, 3 L. R. A. (N. S.) 345. See 2 VA. LAW REV. 298. The general rule is that the question of the pedestrian's contributory negligence is, under the circumstances of the particular case, a question of fact for the jury. *Gerhard* v. *Ford Motor Co.*, 155 Mich. 618, 119 N. W. 904, 20 L. R. A. (N. S.) 232; *Baker* v. *Close, supra.* It is, therefore, generally held that it is not contributory negligence *per se* for the pedestrian to fail to keep a constant lookout. *Deputy* v. *Kimmell*, 73 W. Va. 595, 80 S. E. 919, 51 L. R. A. (N. S.) 989; *Williams* v. *Benson*, 87 Kan. 421, 124 Pac. 531; *Hennessey* v. *Taylor, supra.* All the cases hold that the pedestrian is not required, in the exercise of ordinary care, to stop, look and listen when crossing a street, as he is required to do when crossing a railroad track. *Terrill* v. *Walker*, 5 Ala. App. 535, 59 South. 775; *Baker* v. *Close, supra; Williams* v. *Benson, supra.* See 3 VA. LAW REV. 466.

The cases are almost unanimous in holding that it is not contributory negligence as a matter of law for a pedestrian to fail to look both ways before crossing a street, and that the question is one of fact for the jury. *Minor* v. *Mapes*, 102 Ark. 351, 144 S. W. 219; *Lewis* v. *Seattle Taxicab Co.*, 72 Wash. 320, 130 Pac. 341. But see *Davis* v. *Breuner*, 167 Cal. 683, 140 Pac. 586.

While the general rule is as above stated, there are cases in which it is negligence *per se* for a pedestrian to fail to look before crossing a street, as where he attempts to cross a crowded thoroughfare; and where the duty is thus positively imposed upon him he must look with the purpose of seeing and guarding against approaching vehicles. *Larner* v. *New York Transp. Co.*, 149 App. Div. 193, 133 N. Y. Supp. 743. Where a person has thus looked with the purpose of seeing but failed to see an approaching automobile and is injured by it, the question of his contributory negligence should be left to the jury. *Gouin* v. *Ryder* (R. I.), 87 Atl. 185; *Rump* v. *Woods*, 50 Ind. App. 347, 98 N. E. 369.

The pedestrian has the right to presume that others will use due care. *Hennessey* v. *Taylor, supra; Deputy* v. *Kimmell, supra.* The pedestrian may presume that others will obey the law, and it is not his duty to look for vehicles approaching on the wrong side of the street. *Bradley* v. *Jaeckel*, 65 Misc. 509, 119 N. Y. Supp. 1071. See *Mosso* v. *Stanton*, 75 Wash. 220, 134 Pac. 941, L. R. A. 1916A, 943. While the sense of sight is the one most often employed in such cases, yet the pedestrian is bound to the reasonable use of all his senses to prevent an accident. *Hannigan* v. *Wright*, 5 Pen. (Del.), 537, 63 Atl. 234. See *Minor* v. *Stevens*, 65 Wash. 423, 118 Pac. 313, 42 L. R. A. (N. S.) 1178.

CORPORATIONS—POWERS—POWER TO ACT AS GUARDIAN.—A corporation, upon its own application, was appointed guardian of an infant orphan. The defendant, as agent of the corporation, was given custody of the child; whereupon the plaintiff made application for the surrender of the child. *Held*, a corporation may act as guardian of the estate, but not of the person. *Murphree* v. *Hanson* (Ala.), 72 South. 437. See NOTES, p. 140.